

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

C.L.,
Plaintiff,

v.

ANDREW SAUL,
Defendant.

Case No. 20-cv-06161-SVK

**ORDER FOR SUPPLEMENTAL
BRIEFING ON ISSUE OF TIMELINESS
OF MOTION FOR ATTORNEY'S FEES**

Re: Dkt. No. 30

Plaintiff filed this action on August 31, 2020, seeking judicial review of the Commissioner of Social Security's decision denying Plaintiff's claim for disability benefits. Dkt. 1. On August 17, 2021, the Court granted the Parties' stipulation to remand the case for further administrative proceedings. Dkt. 27. On August 31, 2021, the Court granted the Parties' stipulation to settle Plaintiff's claim for an award of attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). Dkt. 29. On July 25, 2024, Plaintiff filed the present motion for an award of attorney's fees pursuant to 42 U.S.C. § 406(b), which is now pending before the Court. Dkt. 30 – the "Fees Motion".

Section 406(b) "does not contain a specific time deadline for the filing of an attorney's fees request." *Sharlatt v. Astrue*, No. C 04-4724 PJH, 2008 WL 5000531, at *1 (N.D. Cal. Nov. 21, 2008). A court in this District has held that, in the absence of controlling Ninth Circuit law, there is no clear answer as to whether request for attorney's fees under section 406(b) is timely. *Id.* at *5. That court concluded that the "reasonable time" standard of Federal Rule of Civil Procedure 60(b)(6) appeared to be the appropriate standard for evaluating the timeliness of such an attorney's fees motion. *Id.* The court found it appropriate to consider "any unreasonable delay and whether the attorney was responsible for the delay." *Id.* at *1; *see also Herrera v. Berryhill*, No. ED CV 14-1340-E, 2019 WL 157724, at *3 (C.D. Cal. Jan. 10, 2019).

According to the Fees Motion, on remand from this Court, Plaintiff was awarded continuing disability benefits. Dkt. 20 at 3. The Fees Motion states that Plaintiff obtained additional provisional benefits in 2023, at which time the Social Security Administration (“SSA”) withheld \$20,470 for attorney’s fees. *Id.* SSA notices attached to the Fees Motion, which are dated March 9, 2023, reflect the withholding of approximately \$20,470 for a potential payment of fees to the claimant’s approved representative. Dkt. 30-2 at PDF p. 3 – the “Notices.” The Notices provided that “[i]f your representative wants us to pay the fee from your withheld benefits, he or she must ask us to approve the fee within 60 days of the date of this letter,” although the Notices also state that the representative may inform the SSA by the same deadline that he or she is not finished working on the case and wants to charge a fee. *Id.* The record before the Court on the Fees Motion is silent as to whether Plaintiff’s attorney notified the SSA of an intent to seek attorney’s fees and as to the current status of the amount withheld by the SSA for attorney’s fees. The Fees Motion states that a final favorable decision on Plaintiff’s claim was issued in February 2024, although that decision was not submitted with the Fees Motion. *Id.*

From the present record, the Court is not able to determine whether the Fees Motion is timely, *i.e.*, whether there was an unreasonable delay in filing the motion and whether the attorney was responsible for the delay. Accordingly, the Court directs Plaintiff to file by **September 10, 2024** a supplemental brief not to exceed three pages, along with a supporting declaration, to address the timeliness of the Fees Motion. The supplemental brief should address both (1) the delay between the March 9, 2023 Notices and the filing of the Fees Motion, and (2) the delay between the February 2024 final decision and the filing of the Fees Motion. Defendant Commissioner may, but is not required to, file a response within **7 days** of the filing of Plaintiff’s supplemental brief.

SO ORDERED.

Dated: August 20, 2024



SUSAN VAN KEULEN
United States Magistrate Judge